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POLICE VEHICLE PURSUITS

A LEARNING CONTACT

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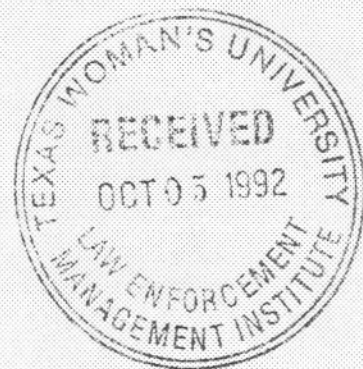
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INTRODUCTION:

Police throughout the country are involved in hundreds of motor vehicle pursuits every day. Many of the pursuits have ended in property damage, personal injury, and death to make the police pursuit a tantamount public concern. Indeed, the police pursuit has become an explosive issue within the past decade, so much so that the motor vehicle is considered by some as the deadliest weapon in the police arsenal.

Police pursuits are a well worn path that has, and is still being travelled by many researchers and police analysts. Each author has, in their own way, attempted to explain why the police should or shouldn't pursue. I intend to offer an examination of various issues associated with pursuits and their related problems. I will allow the reader the opportunity to draw his or her own conclusions regarding the right of the police to pursue.

However, before anyone can examine the cause and effect of a police pursuit, it is essential that the reader have a definition of what constitutes a pursuit.

For this paper, pursuit may be defined as an active attempt by a law enforcement officer on duty in a patrol car to apprehend one or

more occupants of a moving motor vehicle, providing the driver of such vehicle is aware of the attempt and is resisting apprehension by maintaining or increasing his speed, or by ignoring the law enforcement officer's attempt to stop him.

This definition establishes four key points:

- * That the law enforcement officer is in a patrol car and should therefore be recognizable as a law enforcement officer.
- * That the driver is aware that the law enforcement officer is trying to stop him and resists the attempt.
- * That the reason for the pursuit may encompass traffic offenses; including speeding and felonies.
- * That vehicle speed may vary. Although risk is ordinarily perceived as increasing in proportion to speed, even low or moderate speeds can create substantial risk in heavily populated area.

BACKGROUND:

American law enforcement agencies have historically applied new technologies and innovations to control criminal behavior.

The automobile is one of the most significant technological innovations adopted by the police in their crime control strategy.

The use of motor vehicles by the police is traceable to the early twentieth century.¹ In 1905, the St. Louis Police Department developed one of the nation's first traffic control units in

response to a growing number of citizen complaints about speeding automobiles. That same year the department also reported its first police vehicle accident. Two St. Louis police officers, in pursuit of a speeding automobile, were forced to jump from their vehicle to avoid injury. The vehicle was left to collide where it would.²

Since that time the automobile has become an important tool in allowing the police to perform their law enforcement functions. However, as with any tool, the necessary training must be received to maintain proficient handling of that item.

The automobile has allowed society to become more mobile and in doing so, has forced law enforcement administrators to "mobilize" their officers. One of the results of this phenomenon is that police across the country are increasingly dependent upon the automobile to assist them with their law enforcement function. These law enforcement activities incorporate such things as routine patrol, traffic enforcement, and felony arrests stemming from more serious offenses where the criminals have used a motor vehicle to flee the scene. Because of the increased use of the automobile by both officers and offenders, the motor vehicle pursuit has, likewise, increased. This increase in pursuits has caused a wide mixture of problems for the police and their communities.

Only within the past decade has law enforcement, in general, recognized that training police officers in motor vehicle pursuits

can enhance the possibility of not having a "bad pursuit". This concern is predicated upon several factors, some of which have been compiled in a study conducted during the 1960's by the Department of Transportation. They are:

- * 50,000 to 500,000 hot pursuits occur annually in the U.S.
- * 6,000 to 8,000 of the pursuits result in accidents.
- * 300 to 400 pursuit related fatalities occur every year.
- * 2,500 to 5,000 pursuit related injuries occur every year.³

These figures are extremely broad in scope and tend to indicate that the police might pursue at the first opportunity. However, many of the earlier studies were conducted with inadequate or non-factual data. Prior to the 1960's, research on pursuit is extremely deficient, making it difficult for the earlier studies to have anything to compare their data.

The outcome of the research was often based upon which group conducted the research; the police who advocated pursuit or the public groups who believed that pursuit driving resulted in disastrous and expensive outcomes.

Another report, which was conducted nationwide, and focused on the negative aspects of pursuits was published by the Physicians of Automotive Safety in 1968. Their findings, which are still cited

today, include:

- * one out of five pursuits ends in death;
- * five out of ten pursuits end in serious injuries;
- * seven out ten pursuits end in accidents;
- * one out of 25 killed is a law enforcement officer;
- * four out of five pursuits are for minor offenses; and
- * pursuits cause more than 500 deaths each year.⁴

This report and its conclusion created some concern within the law enforcement community. However, the basic argument presented by the report stated that human life is much too valuable to be jeopardized in the maintenance of what the report regarded as an "unreliable police tactic".

One of the first research projects to refute the data collected by the Physicians for Automotive Safety was a study conducted by the California Highway Patrol in the early 1980s. The California Highway Patrol, responding to the pleas from the decade before, conducted an exploratory study on police pursuits. Although limited to a six month period, and substantially limited to freeways, the study provides an excellent base of information. The CHP study used almost 700 pursuits to conduct the study.

Their information illustrated that:

- * 683 pursuits were conducted;

- * 198 pursuits (29%) resulted in accidents;
- * 99 pursuits (11%) resulted in injuries;
- * 7 pursuits (1%) resulted in death;
- * 27 pursuits (4%) were voluntarily terminated by the officer;
- * 429 (63%) of the pursuits were initiated for traffic offenses;
- * 179 (26%) of the pursuits were initiated for DUI;
- * 75 (11%) of the pursuits were initiated for serious criminal activity; and
- * 243 (36%) pursuits were voluntarily terminated by the driver who surrendered.⁵

Since the publications of these earlier reports, many law enforcement agencies and researchers have conducted studies illustrating the data that support pursuits. Conversely for every report that mitigates the danger of police pursuits there is also one that unequivocally casts grave doubt on the need for the police to pursue.

The statistics presented in this report are not the sole driving force behind the anxiety felt by police administrators. Across the country in increasing numbers municipal governments are being compelled to deal with a variety of issues connected with high speed pursuits. Issues such as pursuit policies, training practices, and legal ramifications (which all too often result in a

large monetary loss to the municipalities), are just a few of the concerns being addressed by police administrators.

When one looks at the statistics presented in this report, it might seem that the number of deaths and injuries are relatively small in comparison to the actual number of pursuits. The question, then, becomes whether any death or injury can justify a police pursuit; especially if the basis for that pursuit is a misdemeanor violation. Aside from this question, this police practice often results in legal liability. Courts attempt to balance criminal apprehension and the potential dangers of police pursuit. In doing so, a number of lawsuits have resulted in six or seven figure awards and several have brought some municipalities and townships near bankruptcy.⁶

It might be observed that a county or municipal government facing a \$5-million judgement will not find much solace in statistics illustrating that accidents creating such liability occur only once in a thousand pursuits.

The police are now being held accountable for high speed pursuits just as they are held culpable for the improper use of firearms. Deadly force has taken on an entirely new meaning. In the past it pertained to the firing of a weapon. Now, recent court decisions have included the use of a motor vehicle while in pursuit.

LEGAL ISSUES:

Since 1989, three United States Supreme Court decisions have been handed down that have a direct bearing on the pursuit issue. In Tennessee v. Garner the Court held that except in certain circumstances, the use of deadly force to apprehend a fleeing, unarmed suspect is unreasonable seizure under the fourth amendment. The Court rejected the use of deadly force to prevent the escape of all felony suspects, regardless of the circumstances.⁷

That decision plays an important role in the Brower v. County of Inyo case. The Supreme Court stated that high speed chases have frequently been analogized to the use of deadly force. In this case officers chased the driver of a stolen car into a roadblock other officers had created by parking a tractor-trailer across a two-lane highway in the middle of the night. The collision culminated in the death of the suspect.⁸

In City of Canton v. Harris the question sought to define what is adequate training for an officer in the use of deadly force. Further, whether employees are responsible for the independent actions of officers. The Supreme Court majority opinion stated in part:

But it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers

of the city can reasonably be said to have been deliberately indifferent to the need.⁹

The Supreme Court's principal ruling in CITY OF CANTON v. HARRIS is that inadequate police training may result in the burden of municipal liability.

CITY OF CANTON v. HARRIS provides an offhanded pronouncement that a failure to train amounting to "deliberate indifference" can impose liability on a municipality. What it fails to furnish is any clear guidance concerning the meaning of "deliberate indifference". Taking its cue from the Supreme Court, the Texas Supreme Court ruled that police may be held liable for accidents resulting from high-speed chases. The ruling stemmed from a 1983 fatal crash in Mesquite, Texas. An innocent passenger in another car was killed by the driver whom officers chased against traffic on a one-way street. This decision reversed rulings of lower courts in Texas, which held that police departments were normally not liable for chase related accidents.

The message is clear; the courts and the public are not going to condone high speed pursuits which result in injury or death to innocent third parties and even "guilty" second parties. The police also will not tolerate pursuits that produce continuous injuries or deaths among their ranks. As a result, the courts, the public, and police administrators are prepared to deal harshly with the officers when their lack of training and discretion are the causes of an accident.

Some studies and surveys have claimed that police officers and the suspects they are chasing are not the only persons that are injured or killed. The studies indicate that many times the victim is the innocent non-involved citizen who is reluctantly made part of the chase.

This assertion is difficult to corroborate. In most of the studies the percentage of collisions are reported without differentiating the number of non-involved citizens included in the percentage. This, in part, is due to the fact that the studies take a broad perspective when analyzing pursuit related data. Researchers tend to group all collisions regardless of deaths and injuries in the same category, thereby raising the percentage numbers. It would be interesting to conduct a study on pursuits that delineated accident information in regard to police, criminals, and non-involved citizens. The pertinent data is available to anyone willing to collect the information. However, this reporter has not encountered research of that nature.

I do not want to give the impression that non-involved third party accidents never occur during police pursuits. On the contrary, this situation does occur. The dilemma is the information has not been collected and disseminated. However, with the increased interest generated by pursuits, more researchers are delving into this topic, and more specific information concerning non-involved third

parties could be available soon.

Regardless of who is involved in pursuit related accidents the police are wedged in the middle of a dilemma. Officers pursue and literally play Russian roulette, hoping to avoid an accident in which serious injury or death involves either suspect, officer or a non-involved member of the public. On the other hand, if the police choose not to pursue, they could chance the loss of credibility with law-abiding citizens who may believe that the police should pursue to be effective law enforcers.

Public knowledge that a police department has a policy which sharply restricts pursuit could encourage some people to flee, decreasing the probability of immediate apprehension.

Given this situation, police departments across the country are striving for a clearly defined pursuit policy. A policy that gives the officer the necessary guidance he or she might require under circumstances that could warrant a chase.

CREATING A POLICY:

The police must then ask; what type of policy do we need to best serve the public interest? The ultimate goal of regulating the officers' actions during a pursuit is to limit the prospect of loss of life, injury, or property damage. The policy must be designed so

the officers and their supervisors have a clear understanding of what is expected during a pursuit. According to Hugh Nugent, writing in a National Institute of Justice publication, pursuit policies should:

- * Give officers a clear understanding of when and how to conduct a pursuit:
- * Promote the reduction of injury and death:
- * Maintain the basic police mission to enforce the law and protect life and property:
- * Minimize municipal liability in accidents that occur during pursuits:¹⁰

Certainly, these considerations will only be the tip of the iceberg when a police agency begins developing a pursuit policy. However, the overriding concern should be the officer's ultimate responsibility of public protection. In this case, policy should dictate stopping a pursuit when they believe the conditions may create an unacceptable degree of risk for themselves, noninvolved persons or even the suspect. That obligation has been eloquently stated by an Oklahoma police chief writing on liability issues of pursuits when he wrote "primum non nocere" (first do no harm).

In other words, the officer must be able to balance the need to immediately apprehend a suspect against the possible danger created by the pursuit. If innocent citizens, a police officer, or the

suspect are injured or killed, can it truly be stated that justice was served?

How can a policy be developed that will achieve these purposes? First, an agency needs to closely examine three different policing styles in the search for an appropriate policy:

- * Discretionary--allowing officers to make all major decisions relating to initiation, tactics, and termination.
- * Restrictive--placing certain restrictions on officers' judgement and decisions.
- * Discouraging--severely cautioning against or discouraging any pursuit, except in the most extreme circumstances.¹¹

This is not to say that a department must choose between only the three types of policies. Each style should be given proper consideration and possibly merged with other perspectives to produce an effective policy. What is glaringly apparent is that an appropriate and tolerable operational response is necessary. A policy that ensures the safety of the public, the officers, and the suspects is necessary if pursuits are going to be permitted by an agency.

It is important for officers to understand the outcome of their decisions during a pursuit. Once the decision has been made by the

officer to chase the suspect, the officer's reasoning powers should not suddenly cease because of the heat of the moment. The officer must constantly re-evaluate the pursuit while in progress, continually updating other officers, the supervisor, and the dispatcher as to the actions of the suspect. The supervisor should closely monitor the lead officer's radio transmissions so that he can make the appropriate determination whether to call off the pursuit or continue.

The information the supervisor must receive is not limited to, but should contain, the following:

1. What is known about the suspect, and the suspects' actions;
2. Speed of the suspect;
3. The violation that the suspect is being chased for;
4. Location and direction of travel;
5. Time of day (2 a.m. as opposed to 3 p.m. would dictate the volume of traffic the suspect and officer must contend with);
6. Driving conditions (snow, rain, ice, road construction, rural road or busy city street);
7. The driving behavior of the suspect (taking reckless chances); and
8. Suspect vehicle description and other vehicle occupants.

The officers must be aware that they cannot assume the violator is running because the individual is wanted for something more serious than a simple traffic offense. Officers should understand that they can only justify the pursuit for what they know, not by what they assume to be true.

The rule of thumb is: the officer's need to base actions on facts, not assumptions. Many times officers allow their ego to get in the way of sound judgement, which can lead to trouble during a chase.

When it comes to a chase activity, it is essential the officer know it is not a personal matter. The officer's personal speed limit is not being violated. The officer did not post the stop sign that was ran. When it comes to a pursuit, all that can be asked of officers is for them to do their job to the best of their ability.

The pursuit cannot be allowed to deteriorate to the point that it becomes a serious hazard for the officer, the citizens and the violator: Although many blemished pursuits are terminated without an accident, it is the final result that distress the police and the public.

Data from the Metro-Dade Police Department indicate two important trends worth investigating. First, the majority of pursuits are initiated for traffic infractions, but many of those apprehended

are often charged with serious felony offenses unrelated to the pursuit.

This indicates that many offenders are running from more than traffic offenses which initiated the pursuit, and may be involved in serious property or person crimes. However, as previously stated this cannot be assumed by the pursuing officers. Second, accidents occur in slightly more than one-half of pursuits in which an arrest occurs.¹² Accidents occur in less than one-half (43 percent) of the traffic-initiated pursuits that result in arrests, while accidents occur in 66 percent of the pursuits initiated for BOLO's (be on the lookout), felony stops, reckless driving, and DWI stops. This difference in rate of accidents indicates that either the offenders or the police are willing to take more chances when being pursued or pursuing for serious offenses.¹³

These findings have enlightened the difference between traffic-initiated pursuits and pursuits initiated for other reasons. First, accidents occur most often in the chases started by serious events when compared to the traffic-type pursuit. Second, since more offenders escape from police in the traffic-related pursuits, it appears that the police will not take the same variety or degree of chance that they might in other types of pursuits. Lastly, violators and the police are more likely to terminate a traffic-initiated pursuit than one of a more serious nature.¹⁴

SECESSION OF PURSUIT:

One of the toughest decisions that the officer will have to make is when to call off a pursuit. As the pursuit is taking place, the officer must constantly assess what is happening. The officer must keep one fact in mind. There is no pursuit that is worth his or her life, or the life of anyone else who might become involved.

Additionally, the officer should maintain that whenever the pursuit becomes more dangerous to the officer, or to the public, than the original cause for the pursuit, it is time for the officer, or the monitoring supervisor, to call it off. This is usually dictated by the circumstances surrounding the pursuit which could include the following:

- * Is the suspect driving skillfully?
- * Does he/she appear intoxicated?
- * Does the speed dangerously exceed the normal flow of traffic?
- * What type of vehicle is being pursued (high powered car, or motorcycle)?
- * Is the suspect an adult or a juvenile?
- * Can the suspect be apprehended at a later time via vehicle registration?
- * Does a clear and unreasonable hazard exist to the

officer, the violator or a member of the public?

- * What is the totality of the hazards created during the pursuit (erratic driving by the violator)?
- * Is the suspect heading into town, out of town, or into a school zone?

There will be a myriad of problems that the police must face while dealing with pursuits. Obstacles such as number of vehicles permitted during the pursuit, interjurisdictional pursuit policies, and tactics employed to apprehend the suspect. Many of these problems can be addressed with proper training sessions, and continual updates of pursuit policy. These recommendations will assist officers and supervisors in understanding what is expected of them during a chase.

TRAINING:

Formulating the pursuit policy and training officers in pursuit tactics will be a major task for any police department. The department's administration must make its members aware that officers who pursue within the guidelines set forth by the department will be fully supported. However, there will be officers who choose to ignore their department's pursuit policy and training guidelines. For them it must be made obvious that their behavior will not be tolerated. Training in pursuit and tactical driving skills should be an ongoing activity in every police department.

This type of training will facilitate an officer's ability to make the proper decisions during a pursuit, reducing the risk of an accident.

Requiring the officers and supervisors to submit a written critique explaining their actions during the chase will allow the department the opportunity to scrutinize officer actions, department policies and training procedures. This procedure should improve general accountability for decisions and behavior on the part of officers and supervisors. This basic management approach should also cause pursuing officers to acknowledge to themselves what their limitations are during a pursuit.

Additional thoughts to be considered while constructing training procedures should be to:

- * Naming the types of pursuits that will be allowed: felony versus misdemeanor;
- * Set guidelines explaining tactics to be used;
- * Number of vehicles allowed to participate in a pursuit;
- * How far from the agencies' jurisdiction should a pursuit continue;
- * Provide instructions for pursuit termination;
- * More clearly defined supervisory roles;
- * Require report and review procedures.

These training methods, and stronger accountability for participants in a pursuit, can provide the department with more valuable information. This expanded knowledge of pursuit circumstances will enable the department to ascertain whether current training techniques are viable. Additionally, the information gathered can help determine if the pursuit was necessary, was within department guidelines, and maximized operational safety.

Furthermore, this data can help determine if training procedures should be re-evaluated, or if present policies governing pursuits should be modified. Lastly, the data compiled from the reports and reviews should, over time, disclose problems or negative trends during pursuits.¹⁵ Only through requirements such as these can officers and supervisors hope to recognize and minimize risks inherent to pursuits.

CONCLUSION:

The use of firearms has not been removed from the police, and those officers who use deadly force appropriately are supported by the public. Accordingly, public support will continue for those officers who pursue offenders and remain within the appropriate guidelines. Therefore, each department should have a sound pursuit policy and properly conducted training to ensure that it is responsive to its needs and the public's as well. These policies

and training procedures should be constantly updated and revised as needed and must be regarded in the same manner as the use of firearms.

High-speed vehicle pursuits are possibly the most dangerous of all ordinary police activities. Far more police vehicle chases occur each year than police shootings. However, development of legally sound police vehicle pursuit policies lags behind development of deadly force policies involving firearms. However, it appears likely that changes in law, policy, and practices are forthcoming and that the change process will be much less painful than that compared with the use of firearms.

In addition to the wisdom of not putting the public at unnecessary risk, liability from pursuit accidents can be crippling to any law enforcement agency. Nevertheless, the law does provide protection where agencies have made a concentrated effort to design and execute specific pursuit mandates that regulate officers' behavior. Agencies should draft and implement specific pursuit directives; adequately train officers in the policy and techniques of pursuit driving; and closely supervise, review, and evaluate implementation of pursuit policy. However, the most important reason for effective pursuit policies is not minimization of liability; it is to protect life and property-the basic police mission.

Once again the words of the Oklahoma police chief comes to mind,
"PRIMUM NON NOCERE".

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